

James
Proposed bill for county depositaries.

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November 3rd 1905

PROPOSED BILL

FOR

County Depositories

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to Francis B. James, Attorney at Law, Mercantile Library
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PROPOSED BILL

FOR

County Depositaries

PREPARED FOR

The Ohio State Board of Commerce

BY

FRANCIS B. JAMES

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Board of Commerce.

OHIO STATE BOARD OF COMMERCE
COLUMBUS

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INTRODUCTION.

It is universally conceded that public moneys ought not be locked up in public vaults and thus withdrawn from circulation. Even the Federal Government, with its antiquated treasury system, places public funds in national banks upon adequate security. Ohio for seventeen years has recognized, in part, the sound economic principle that public funds should be kept in circulation and yield a reasonable rate of interest for their use.

The first statute passed in Ohio governing county depositaries was the special Act of April 13, 1888 (85 O. L. 230) which took effect October 1, 1888, and applied only to Cuyahoga County of which Cleveland is the county seat. Under its provisions it became mandatory to place the public funds in a bank at interest. The depositary was selected by competitive bidding and the funds were awarded to the bank offering the highest rate of interest. A minimum rate of interest was not prescribed. This special act was amended October 1, 1894 (91 O. L. 605).

A special depositary act applicable to Lucas County was passed April 13, 1888, to take effect

August 1, 1888 (85 O. L. 243). It was mandatory and somewhat similar in its provisions to the Cuyahoga County Act. A minimum rate of two per cent interest was prescribed. The Toledo Special Act was amended February 13, 1889 (86 O. L. 44).

A special act for Stark County was passed April 15, 1889 (86 O. L. 385) to take effect September 1, 1889. This act was mandatory and prescribed a minimum rate of interest of two per cent and is similar in its provisions to the Cuyahoga Act.

A special act applicable to Seneca County was passed March 26, 1891 (88 O. L. 216.) This act is mandatory and prescribes a minimum rate of interest of two per cent and requires competitive bidding every two years. It is somewhat similar in its provisions to the other special acts.

The act of May 21, 1894, (91 O. L. 403) was a special one applicable to the other eighty-four counties of the state, and county commissioners are permitted to select depositaries by competitive bidding. It is somewhat similar in its other provisions to the four special acts. It was amended April 27, 1896, (92 O. L. 353) and again amended April 26, 1898, (93 O. L. 376).

A statute somewhat similar to the special act governing Cuyahoga County was passed March 11, 1889 (86 O. L. 70), to take effect September 1, 1889. This was made applicable to Summit County, of which Akron is the county seat. This act was repealed on March 17, 1891 (88 O. L. 124), and a new statute substituted in its place. The latter statute was repealed April 15, 1892 (89 O. L. 302).

A similar statute was passed May 21, 1894 (91 O. L. 853), and was made applicable to Summit County, of which Akron is the county seat, and Mahoning County, of which Youngstown is the county seat. This was repealed April 27, 1896 (92 O. L. 846.) The Act of March 11, 1889 (86 O. L. 70), above referred to and being the first statute passed to provide for a county depository for Summit County came under the review of the Supreme Court of Ohio in the case of **State vs. Ellet** (1890) 47 Ohio St. 90. The Supreme Court held that this law was of a general nature and as it was limited in its operation to Summit County, it was unconstitutional and void. In declaring this statute unconstitutional, **Judge Williams** said (pages 95 & 96):

"This act, in substance, provides that the county commissioners shall, in a specified mode, contract with one or more banking institutions, incorporated under the laws of this state, or of the United States, for the loan of the public money in the county treasury, at a rate of interest not less than two per centum, and that the county treasurer, upon receiving written notice from the commissioners, that such contract has been awarded, naming the bank selected as such depository shall deposit in such bank to the credit of the county, all moneys in his possession; and, thereafter, daily, in like manner, deposit all moneys received by him, on the preceding business day. These contracts for loaning the money, are required to be renewed, or new ones

made, every six months, and provision is made for removing the possession of the last to that of the succeeding borrower. The money so deposited, shall bear interest at the rate agreed upon, to be computed on the daily balances, 'and such interest shall be placed to the credit of the county on the first day of March and September each year, or at any time when the account may be closed.' The act then points out in detail the mode of disbursing the funds by the depositary upon checks drawn by the treasurer, the duties of the auditor and treasurer with respect thereto, and prescribes an elaborate method for keeping the fiscal accounts and preserving the vouchers. Under one of its provisions, the treasurer may retain in his custody, funds not exceeding five thousand dollars, with which to pay jurors and witnesses their fees, and warrants payable from the soldier's relief fund.

"The subject of the statute, is the custody, safe-keeping and disbursement of the public revenues, and the duties of public officers concerning them. Included in these revenues, are the moneys collected on the levy for the payment of the interest and principal of the public debt of the state, the general revenue fund, the state common school fund, money collected from the tax on the business of trafficking in intoxicating liquors, a portion of which goes into the revenues of the state, taxes levied for defraying county expenses, repairing roads and bridges, and keeping the poor, as well as those col-

lected upon special levies for school, county, township and municipal purposes, and all other public money, from whatever source derived, coming into the hands of the county treasurer. In the safe keeping and proper disbursement of these funds, are involved, the credit of the state, the due administration of the state government, the efficiency of the common school system, the proper maintenance and management of the benevolent and penal institutions, and other matters of public concern, in which the tax payers and people of the state at large, have important, if not equal interest.

“Hitherto the whole subject of keeping and disbursing, as well as raising the public revenues, has been regarded of such common interest to all the people of the state, that it has been regulated by a general law operating uniformly throughout the state. County treasurers are required to be elected in the several counties, and they hold their office, for the same terms. They are, in their respective counties, made the collecting and disbursing officers of the public revenues. The same general duties are enjoined upon them, in the discharge of which, the same legal machinery is employed and the performance of which, are secured and enforced in the same manner. The county commissioners are required to provide all such rooms, and fire and burglar proof vaults and safes, and other means of security in the office of the county treasury, as are necessary for

the perfect protection of the public moneys and property therein.' Rev. Stats., Sec. 859. The treasury is subject to frequent examinations, with or without notice to the treasurer, and severe penalties and forfeitures are imposed for his delinquency or malfeasance. He is required at prescribed periods to make settlements with the state auditor, and pay over to the state treasurer, all money belonging to the state."

Judge Williams also said (at pages 98-99):

"It is apparent that the general statutes relating to the custody and disbursement of the revenues do not contemplate any local conditions permitting the removal of the public moneys from the custody of the county treasury, as the place of their deposit, and safe keeping; nor, that they should be held and paid out otherwise by the treasurer. These regulations are not founded upon any considerations merely local, nor is the subject local in its nature, but as we have already seen is of general public interest. What local circumstance, or condition can there be with respect to the subject, in any county, that does not also exist in every other county? Or what considerations are there, rendering the application of this particular statute, adopting such radical changes, necessary or advisable in Summit County, that do not make it equally necessary, or advisable in each of the counties of the state? It is not contended that there are any, and none are perceived. If it be said, that a safe place of deposit

in the county treasury has not been provided, or that it has become temporarily unsafe, or that the incumbent of the office is incompetent or unfaithful, the same condition of things is liable to occur in other counties, and as much so in one, as another; for, the same requirements are made by law for providing Summit County with a safe place for the deposit of the public money in the treasurer's office, as are, for every other county, and in each county, the same regulations are in force, for choosing the officer, securing and enforcing the performance of his duties, detecting and punishing his defalcations, and for removing him from office and filling the vacancy. If such conditions should exist in any county, they must in their nature be temporary. In view of the law, it can hardly be supposed that the treasurer's office has not been furnished with the necessary vaults or places for the safe deposit of the public funds; and, if such vaults or places have been destroyed, or become unsafe, the duty of the county commissioners is imperative, to at once restore them and make them safe. Unfaithfulness on the part of public officers is exceptional, integrity and competency the rule. Official misconduct, is, therefore, not to be presumed, and generally, when it occurs, measures are promptly taken to prevent its continuance or recurrence. Obviously, the statute which the defendants claim confers upon them the powers and franchises they are charged with exercising, was not adopted to meet merely tempo-

rary or local emergencies or conditions. It enacts for Summit County, a permanent and comprehensive system of law, relating to the custody and disbursement of the public funds, not only essentially different from that established for the remainder of the state by the general statutes, but directly at variance with it. It is the experiment of a new scheme, general in its nature, and local only in its application. It strips the present, and each succeeding county treasurer, of many important functions of his office, and makes him little more than a mere conduit for the transmission of the public moneys from the hands of the taxpayers, and other sources of revenue, to the bank selected as the depository. It changes the place of their safe keeping, removes the safeguards provided for their security and the protection of the public, and substitutes for them others wholly different, and changes the whole method of disbursement, and the system of fiscal accounts.

“We are not to be understood as calling in question the wisdom or policy of the statute. The system it provides for the safe keeping and disbursement of the public money of Summit County, may be, in every way a better one than that established by the general statute. But if it be so for Summit County, it must likewise be so for every other county, for the conditions that make it so, exist in each alike.”

Judge Williams also said (at page 101):

“We are therefore of opinion that the statute, upon which the defendants rely, as the source of their authority for the powers and franchises they have assumed to exercise is a law of general nature, applicable only to Summit County, there being no other county having the specified population and containing a city of the designated class and grade, and is in conflict with section 26 of article 2 of the constitution of this state, which requires, that ‘All laws of a general nature shall have a uniform operation throughout the state.’”

Under the reasoning of **Judge Williams** it would seem necessarily to follow that all the present legislation in Ohio on the subject of county depositaries is unconstitutional.

This condition of the law has given rise to the necessity of preparing a bill which when enacted would become a law uniform in its operation throughout the state of Ohio. To-day there are five separate laws on the statute books upon the same subject-matter. Four laws are mandatory and each is applicable to a separate county; a fifth is permissive and is applicable to eighty-four of the eighty-eight counties.

These statutes disclose a great variety of detail and have given rise to great diversity of opinions.

COUNTY DEPOSITARIES: RATE AND AMOUNT OF INTEREST.

These statutes (although unconstitutional) are being enforced in the four counties where the spe-

cial acts are mandatory and are in at least thirteen counties where it is optional. The practical operation of the statutes is shown by the answers from letters addressed to the treasurer of each county in Ohio as follows:

BUTLER COUNTY—County Seat, Hamilton—total collected annually, \$900,000.00; average amount at interest, \$100,000.00; rate of interest, 1 per cent; annual interest, \$507.37. The depository only begun to run October 1, 1904.

CLARK COUNTY—County Seat, Springfield—total collected annually, \$800,000.00; average amount at interest, \$130,000.00; rate of interest, 3 1-10 per cent; annual interest, \$4,000.00.

CUYAHOGA COUNTY—County Seat, Cleveland—total collected annually, \$8,500,000.00; average amount at interest, \$2,000,000.00; rate of interest, 3.381 per cent; annual interest, \$77,081.98.

ERIE COUNTY—County Seat, Sandusky—total collected annually, \$400,000.00; average amount at interest, \$60,000.00; rate of interest, 1½ per cent; annual interest, \$981.82.

FAIRFIELD COUNTY—County Seat, Lancaster—total collected annually, \$320,000.00; average amount at interest, \$111,200.00; rate of interest, 1¼ per cent; annual interest, \$1,390.00.

GREENE COUNTY—County Seat, Xenia—total collected annually, \$32,283.37; rate of interest, 1 per cent; annual interest, \$682.38.

HARRISON COUNTY—County Seat, Cadiz—total collected annually, \$200,000.00; average

amount at interest, \$40,000.00; rate of interest, $1\frac{1}{4}$ per cent.

HENRY COUNTY—County Seat, Napoleon—total collected annually, \$300,000.00; average amount at interest, \$50,000.00; rate of interest, $1\frac{1}{2}$ per cent; annual interest, \$868.00.

HIGHLAND COUNTY—County Seat, Hillsboro—total collected annually, \$138,480.04; average amount at interest, \$44,651.09; rate of interest, 1 per cent. The depository has only run since September 6, 1904.

LAWRENCE COUNTY—County Seat, Ironton—total collected annually, \$178,670.00; average amount at interest, \$69,600.00; rate of interest, 2 6-10 per cent; annual interest, \$2,327.45.

LORAIN COUNTY—County Seat, Elyria—total collected annually, \$800,000.00; average amount at interest, \$143,650.00; rate of interest, 3.51-100; annual interest, \$5,042.08.

LUCAS COUNTY—County Seat, Toledo—average amount at interest, \$337,503.44; rate of interest, $2\frac{1}{2}$ per cent; annual interest, \$13,028.83.

MONROE COUNTY—County Seat, Woodsfield—total collected annually, \$175,000.00; average amount at interest, \$50,000.00; rate of interest, 1 per cent; annual interest, \$534.62.

MUSKINGUM COUNTY—County Seat, Zanesville—total collected annually, \$600,000.00; average amount at interest, \$60,000.00; rate of interest, 3 51-100 per cent; annual interest, \$3,018.80.

PORTAGE COUNTY—County Seat, Ravenna

—total collected annually, \$400,000.00; rate of interest, $1\frac{1}{2}$ per cent.

RICHLAND COUNTY—County Seat, Mansfield—total collected annually, \$750,000.00; rate of interest, 1 per cent.

TRUMBELL COUNTY—County Seat, Warren total collected annually, \$635,000.00; average amount at interest, \$65,000.00 to \$70,000.00; rate of interest, 1 per cent; annual interest, \$1,500.00.

VAN WERT COUNTY—County Seat, Van Wert—rate of interest, 1 per cent; annual interest, \$135.00.

WOOD COUNTY—County Seat, Bowling Green—total collected annually, \$750,000.00; average amount at interest, \$240,000.00; rate of interest, 3 51-100; annual interest, \$8,500.00.

The practical operation of the mandatory act applicable to Cuyahoga County is shown in the following amounts of interest collected during the past fourteen years:

For 1890.....	\$10,153.72
For 1891.....	9,243.35
For 1892.....	16,359.31
For 1893.....	19,871.05
For 1894.....	26,600.14
For 1895.....	24,180.60
For 1896.....	22,471.05
For 1897.....	37,335.07
For 1898.....	23,802.06
For 1899.....	26,596.29
For 1900.....	25,665.58
For 1901.....	39,491.90
For 1902.....	68,384.56
For 1903.....	81,022.71
For 1904.....	76,382.66

On May 3, 1904 (97 O. L. 535), the General Assembly of Ohio provided a depositary for state funds. An examination of this statute will afford interesting data for comparison with the proposed bill for county depositaries. Thirty-five thousand dollars (\$35,000.00) in interest was collected during the first year. The new municipal code of October 22, 1902 (96 O. L. 64-65), also makes provision for the deposit of municipal funds. The new school code of April 25, 1904 (97 O. L.), makes provision for a depositary for school funds. These provisions of the new municipal code and the new school code are crude and unsatisfactory.

It is the general belief that all proposed measures of a general nature should be framed long in advance of their introduction into a legislative body and circulated for criticism and revised in the light of such criticism. This is the practice of the Conference of Commissioners on Uniform State Laws. The wisdom of this procedure is set forth with great force by Mr. Charles McKeehan of the Philadelphia bar in summing up the controversy over the negotiatiable instruments Code. He said:

"Finally, the whole controversy should serve as a useful lesson to those who will in future direct the preparation of statutes codifying other branches of the law in this country. * * * Some errors (precisely how serious no one can say as yet) crept into the Negotiable Instruments Law which might have been avoided had the act, prior to its final revision, been subjected for several years to the most

searching criticism obtained by giving to it the widest publicity and by soliciting the active co-operation of the considerable number of men whose thorough knowledge of the law of negotiable paper, whether from the standpoint of the banker, the practitioner or the student, had fitted them to render valuable assistance in the preparation of a code on that subject. The two or three additional years consumed by pursuing this method would have yielded an ample return, and those who would object to the labor, expense and time required by this method little appreciate the gravity and difficulty of the task of embodying the law in a series of authoritative abstract propositions. Many will regard the shortcomings of the Negotiable Instrument Law as not very serious, but all may well remember that these shortcomings (such as they are) can probably be ascribed to the lack of adequate criticism."

The proposed bill (hereinafter set forth) consists of thirteen (13) new sections in lieu of eighty-four (84) which are to be repealed and amends nine (9) sections of the Revised Statutes in order to bring them into harmony.

Open, full and frank criticisms are respectfully invited by the Executive Committee of the Ohio State Board of Commerce.

FRANCIS B. JAMES,
Counsel.

Mercantile Library Building,
Cincinnati, O., August 19, 1905.

FULL TEXT OF A BILL

To provide for the deposit of funds collected by County Treasurers.

Be it enacted by the General Assembly of the State of Ohio.

SECTION 1. That section eleven hundred and thirty-six (1136) of the Revised Statutes of Ohio be supplemented as follows with the following sectional numbers:

SEC. 1136—A. [DEFINITIONS.] For the purposes of this act the following words shall have the following meanings:

(1) Auditor: The County Auditor of each County.

(2) Approximate: Within twenty (20) per cent of the exact amount.

(3) Approved Securities: Any of the following, to wit:

(a) United States Government bonds; or

(b) State bonds of the State of Ohio, County bonds of any County of Ohio, municipal bonds of any municipality of Ohio, or school bonds of any school district of Ohio, regularly issued according to law, having a market value of not less than par, and as to which there shall not have been any de-

fault for principal, interest or coupons and which are good and collectible in the opinion of the treasurer; or

(c) State bonds of any State other than the State of Ohio which has never repudiated its indebtedness and which have been regularly issued according to law, having a market value of not less than par, and as to which there shall not have been any default for principal, interest or coupons and which are good and collectible in the opinion of the treasurer; or

(d) Municipal bonds of a municipality of any state of the United States other than the State of Ohio, having a population of not less than ten thousand (10,000) inhabitants, whose indebtedness shall not exceed ten per cent of the value of real estate located in such municipality as assessed for purposes of taxation and which have been regularly issued according to law, having a market value of not less than par, and as to which there shall not have been any default for principal, interest or coupons and which are good and collectible in the opinion of the treasurer.

(4) Deposits: Funds placed with a depository.

(5) Depository: A bank or trust company approved as a state depository by the Board of Deposits for state funds and which shall file with the treasurer of the county wherein said bank or trust company is located, a certificate to that effect and

an application that it desires to become a depository under this act and which has not so conducted itself as to warrant a withdrawal of deposits.

(6) Funds: Moneys, checks, drafts or exchange which may be collected by or come into the hands of or be received by a County Treasurer, from whatever source and without regard to the purpose of or to which they are to be applied or to whom to be paid.

(7) May: Permissive.

(8) Shall: Mandatory.

(9) Treasurer: The county treasurer of each county.

SEC. 1136-B. [RESERVE FOR CURRENT EXPENSES.] A treasurer may reserve in his hands a reasonable sum, not to exceed five thousand (\$5000) dollars, for jury fees, witness fees and soldier's relief fund.

SEC. 1136-C. [DEPOSITARIES.] The Treasurer shall from day to day deposit in the depository or depositories as defined in this act² located in his county all funds, except said reserve, if any, and if there be more than one such depository, said funds shall be divided among said depositories in approximate³ proportion to the paid up capital and surplus of said depositories.

SEC. 1136-D. [SECURITY.] Before the Treasurer makes said deposits, each depository shall, as security for the re-payment of the deposits and in-

terest, deposit with the Treasurer approved securities to such amount that ninety-five (95) per cent of the market value thereof shall at least equal the amount of such deposits, and the amount of said approved securities shall be kept at said ratio. The Treasurer may exchange approved securities with a depositary, and a depositary not being in default for re-payment of deposits or interest, shall be entitled to coupons or interest and to a return of all or part of said securities as deposits are either entirely withdrawn and interest paid or reduced in amount.

SEC. 1136-E. [INTEREST.] Depositaries shall be charged with and shall pay interest on deposits and credited interest at the rate of two (2) per cent per annum on daily balances, said interest to be placed to the credit of the funds on the first day of each month. The Treasurer shall, in making settlements, pay the interest to the officer to whom the principal may be paid when said principal amounts to as much as one thousand (\$1,000) dollars, and shall credit the interest on county funds for county purposes and funds less than one thousand (\$1,000) dollars to said county funds.

SEC. 1136-F. [NO CHARGE FOR SERVICES.] No depositary shall make any charge or charges for acting as such depositary, or for making collections or disbursing funds.

SEC. 1136-G. [WARRANTS FOR WITHDRAWAL OF FUNDS.] The Treasurer shall make up a statement of the approximate proportion of the funds to which each depositary is entitled. The Treasurer shall give written notice to the Auditor of the names of the approved depositary or depositaries and of the approximate amount to which each depositary is entitled. He shall also notify the Auditor of each deposit when made. The Auditor shall keep an account of the deposits and withdrawals in and from each of the depositaries.

The Treasurer shall notify the Auditor whether he keeps a reserve for the cash payment of jury fees, witness fees and payments for the soldier's relief fund and the amount thereof. In case of said reserve, warrants of the Auditor thereon shall be in duplicate and said warrants shall be plainly marked "Original" and "Duplicate" on their face. The duplicate warrant shall be receipted by the person receiving the same and retained by the Auditor.

No funds shall be drawn from a depositary except by a warrant of the Auditor on the Treasurer. Said warrant shall be in triplicate and plainly their face. Attached to and forming a part of the marked "Original," "Duplicate" and "Triplicate" on original warrant shall be an unsigned check upon a depositary and a detachable duplicate. The triplicate warrant shall be receipted by the person to whom the warrant is issued and retained by the

Auditor. The original warrant with the check attached and a detachable duplicate shall be presented to the Treasurer. The person to whom the same is issued shall sign said duplicate warrant and the same shall be detached and retained by the Treasurer. The Treasurer shall sign the check which shall remain attached to the original warrant and the original warrant with check attached shall be delivered to the person to whom the same is issued. No depositary shall cash any check of the Treasurer on such depositary unless said original warrant is receipted by the person to whom it is issued, said check duly endorsed and said check remains attached to said warrant.

In drawing said warrants and checks said Auditor shall maintain an approximate proportion for the distribution of funds among depositaries and when any depositary shall have more than its approximate proportion said Auditor shall equalize said deposits by warrants drawn as herein provided.

When the Treasurer shall notify an Auditor that a depositary has been disapproved or rejected by the State Board of Deposits or a depositary does not promptly meet its obligations or a depositary does not strictly conform to all the provisions of the law and this act, said Auditor shall draw warrants so as to deposit said funds in other depositaries, if any, or if not so as to place said funds in the County Treasury.

SEC. 1136-H. [SALE OF SECURITIES.] The Treasurer shall sell any or all securities deposited with him at public or private sale whenever there shall be a neglect, failure or refusal on the part of any depositary to immediately pay over said deposits and interest or any part thereof upon the check, demand or order of said Treasurer; and the absolute ownership of such securities shall rest in the purchaser or purchasers upon the payment of the purchase price to the Treasurer. Any surplus remaining after re-paying the amount of the deposits with interest thereon and expenses of sale, shall be paid over to the depositary having the deposit or its legal representative. Notice of said sale shall be given either by letter addressed to and mailed or delivered to said depositary or its legal representative not less than five (5) days before said sale or by notice published in a newspaper of general circulation in the County where the depositary is located, not less than five (5) days before sale.

SEC. 1136-I. [RESPONSIBILITY OF TREASURER.] The Treasurer and his sureties shall be liable for a faithful performance of the Treasurer's duties under the law and for the proper accounting for and paying and turning over all funds and all securities placed in his hands; but neither he nor his sureties shall be held liable for any funds that may be lost by reason of the failure or insolvency of any depositary or the depreciation of any ap-

proved securities when said Treasurer has used reasonable care.

SEC. 1136-J. [RESPONSIBILITY OF COUNTY.] Where a Treasurer has embezzled or converted to his own use or the use of another or lost, or cannot or does not account or turn over any approved securities, and the bond of said Treasurer is not adequate to cover said embezzlement, conversion, loss, failure to account or turn over, the county of which said Treasurer is the Treasurer shall be legally liable therefor.

SEC. 1136-K. [RESPONSIBILITY OF TAX-PAYER.] The receipt by a Treasurer of checks, drafts or exchange shall in no manner be regarded as payment. No sum shall be considered paid until money has been received therefor either by the Treasurer or a depositary. No responsibility shall attach in any manner directly or indirectly to a Treasurer, his sureties, or the county by reason of the receipt of a check, draft or exchange and they and their collection shall be entirely at the risk of the person turning same in to a Treasurer.

SEC. 1136-L. [MONTHLY BALANCES.] On the first business day of each month the Treasurer shall deliver to each depositary the bank book showing deposits and on not later than the tenth day of each month said depositary shall return said bank book duly balanced with all paid checks with vouchers attached, which shall be carefully preserved by

the Treasurer. Said bank books, checks and vouchers shall be open to the examination of the Auditor and the examiners to be appointed under this chapter.

SEC. 1136-M. [COUNTIES WITHOUT DEPOSITARIES.] When, for any reason, any county shall be without a depository, or none shall file a certificate or application or does not comply with the provisions of this act or it shall not be acceptable for any reason, moneys collected or received by the Treasurer shall remain in the custody of the Treasurer and he shall be governed by the general laws relating to County Treasurers.

SECTION 2. That original section eight hundred and fifty-nine (859), sections one thousand and twenty-four (1024) as amended April 26, 1904 (97 O. L. 458), section one thousand and eighty (1080), section one thousand and eighty-three (1083), section one thousand and eighty-four (1084) as amended April 26, 1904 (97 O. L. 458-459), section one thousand one hundred and five (1105), section one thousand one hundred and twenty (1120), section one thousand one hundred and twenty-six (1126) and section one thousand one hundred and twenty-eight (1128) of the Revised Statutes of Ohio be amended so as to read as follows:

SEC. 859. [COMMISSIONERS SHALL PROVIDE PUBLIC BUILDINGS AND VAULTS, SAFES, ETC., FOR COUNTY TREASURY.] A

court house, jail, offices for the county officers, and an infirmary shall be provided by the commissioners when, in their judgment, the same, or any of them, are needed, and they shall be of such style, dimensions, and expenses, as the commissioners determine; and they are required to provide all such rooms, and fire and burglar proof vaults and safes, and other means of security in the office of the County Treasurer, as are necessary for the perfect protection of the public moneys, funds and securities received from depositaries and property therein. (56 v 160, Sec. 27; 55 v. 44, Sec. 2; 29 v. 315, Secs. 1, 2, 3, 7, 8. S. & C. 1228; S. & C. 1604; S. & C. 1606.)

SEC. 1024. [AUDITORS' WARRANT ON TREASURER.] The Auditor shall issue warrants on the County Treasurer for all moneys payable out of the treasury, when the proper order or voucher or notice of settlement as provided by law is presented therefor and shall keep a record of all such warrants, showing the number, date of issue, the amount drawn for, in whose favor, for what purpose and on what fund; but he shall not issue a warrant for the payment of any claim against the county unless the same is allowed by the County Commissioners, except in cases where the amount due is fixed by law or is allowed by some other officer or tribunal authorized by law to allow the same; provided that when any fund is exhausted,

the auditor and treasurer shall make an estimate of the amount of money belonging to said fund which has been collected as taxes and credited to the undivided tax funds in the treasury and if the commissioners shall deem it advisable, they may by an order entered in their journal authorize the auditor and treasurer to transfer from said undivided tax funds to said exhausted fund an amount not to exceed three-fourths of the amount so estimated to belong to said exhausted fund and at the next semi-annual distribution of taxes the amount so transferred shall be deducted from the total amount found to be due said fund and the estimate herein shall be made in writing and signed by the auditor and treasurer and entered on the commissioners' journal. (97 v 458; 90 v. 103, Sec. 12.)

SEC. 1080. [BOND AND OATH.] The Treasurer, previous to entering on the duties of his office, shall give bond, with four or more freehold securities or one or more surety companies authorized to do business in Ohio to the acceptance of the County Commissioners, and in such sum as the Commissioners shall direct, payable to the state and conditioned for accounting for and paying over according to law all moneys, funds and securities which may be deposited by depositaries which come into his hands for state, county, township or other purposes or which come into his hands as security from depositaries; which bond with the oath of office and

approval of the Commissioners indorsed thereon shall be deposited with the Auditor of the county, and be by him carefully preserved; said bond shall be made a part of the records of the proceedings of the commissioners, of the day when accepted and approved by said Commissioners and entered in full thereon. (87 v. 21; 29 v. 291, Sec. 2; S. & C. 1584.)

SEC. 1083. [FURTHER SURETIES, AND OFFICIAL BOND.] The County Commissioners may require the County Treasurer to give additional sureties on his previously accepted bond, when, in the opinion of a majority of the commissioners, the existing security has become insufficient; and the Commissioners are authorized to demand and receive from such County Treasurer an additional bond, payable to the state, and conditioned as required for the original bond, with good and sufficient security, in such sum as the Commissioners or a majority of them direct, when in their opinion more money or funds or securities deposited by a depositary has passed or is about to pass, into the hands of said Treasurer, than is, or would be, covered by the penalty of the previous bond; and if any County Treasurer fails or refuses to give such additional security or bond, for ten days from the day on which the Commissioners have required him so to do, his office shall be considered vacant, and another Treasurer shall be appointed, as in other cases of vacancy.¹ (36 v. 5, Secs. 1, 2; S. & C. 1589.)

SEC. 1084. [WHERE TO KEEP OFFICE AND HOW ACCOUNTS KEPT.]

The Treasurer shall keep his office at the seat of justice of his county and in a room or rooms provided for that purpose by the county commissioners, which shall constitute the county treasury, in which, except as otherwise specifically provided by law, all public moneys, securities deposited by a depository, and property in his possession shall be at all times kept, and he shall keep an accurate account of all moneys by him received, showing the amount thereof, the time when, from whom and from what source received, and of all disbursements by him made, showing the amount thereof, the time when, to whom and for what purpose paid; and he shall so arrange his accounts that the amount received and paid on account of each separate and distinct fund shall be exhibited in a separate and distinct account; but whenever the bureau of inspection and supervision of public offices so directs, the money received for taxes charged on the general and special duplicates of the current year shall be by the treasurer entered on his account each day in the following manner, to-wit: All collections of liquor tax to be credited to the "undivided liquor tax fund;" all collections of cigarette tax to be credited to the "undivided cigarette tax fund;" all collections of inheritance tax to be credited to the "undivided inheritance tax fund;" and all collections of other taxes and assess-

ments of whatever kind to be credited to the "undivided general tax fund." Each business day the treasurer shall make to the auditor a statement showing, for the preceding day, the amount of taxes received and credited to the various undivided tax funds, the amount received on auditor's draft and the amount received from all other sources, and the total amount deposited in the depository as provided for in section eleven hundred and thirty-six g (1136g), the total amount paid out in cash, the balance in the depository and the balance in the treasury; and at the time of closing the books at the end of each semi-annual collection of taxes, he shall make to the Auditor a statement showing the amount of taxes received in each taxing district in the County since the last semi-annual settlement, under the following headings, to-wit: liquor tax, cigarette tax, inheritance tax, special assessment taxes, delinquent personal tax, road tax, dog tax, and general tax, and the treasurer shall keep such accounts in books to be provided for that purpose, as shall enable him to make the statements required in this section. (97 v. 458-459; 55 v. 44, Secs. 2, 3; 29 v. 291; Sec. 5; S. & C. 1584; S. & C. 1606.)

SEC. 1105. [HOW MONEY SHALL BE PAID OUT.] No money shall be paid out of the County Treasury or transferred to any person for disbursement except on the warrant of the County Auditor. When a county is provided with a county depository a warrant shall be drawn as provided for

in. Sec. eleven hundred and thirty-six g (1136-g).
(55 v. 44, Sec. 9; S. & C. 1608.)

SEC. 1120. [SHALL PAY INTO STATE TREASURY AMOUNT DUE THE STATE.]

After the County Treasurer shall have made each semi-annual settlement with the County Auditor, he shall pay into the state treasury on the warrant of the County Auditor the full amount of all sums found by the Auditor of State, on an examination of the duplicate settlement sheets sent to him by the County Auditor, to belong to the State. The State Auditor shall give the County Auditor notice of such settlement. Where there is a county depositary said warrant shall be drawn pursuant to Section 1136-g. (56 v. 101, Sec. 10, 11; S. & C. 1478.)

SEC. 1126. [WHEN SUIT SHALL BE BROUGHT ON HIS BOND.] If the County Treasurer fails to make any settlement required by law or account for or to pay over any money at the time and in the manner prescribed by law, or fails to account for or turn over any securities deposited with him by a depositary, the County Auditor on receiving instructions for that purpose from the Auditor of State or the County Commissioners, shall cause suit to be instituted against said Treasurer and his sureties for the amount due from him and the value of such securities with ten per cent penalty thereon, which suit shall have precedence of all other civil business and be prosecuted with all convenient speed. (29 v. 291, Sec. 26; S. & C. 1587.)

SEC. 1128. [SHALL DELIVER TO HIS SUCCESSOR ALL PUBLIC PROPERTY IN HIS POSSESSION.] The County Treasurer, at the expiration of his term of office, or on his resignation or removal from office, shall deliver to his successor all moneys, funds and securities deposited by a depositary, books, papers or other property in his possession as Treasurer; and in case of the death or incapacity of the County Treasurer, his legal representatives shall in like manner deliver over the same as aforesaid. (29 v. 291, Sec. 32; 55 v. 92, Sec. 22; S. & C. 1588; S. & C. 1602.)

SECTION 3. That the Act of April 13, 1888, entitled "An act to require the county commissioners, in counties containing a city of the second grade of the first class, to provide a depositary for the county funds and for other purposes" (85 O. L. 230-236); the Act of April 13, 1888, entitled "An Act to require the county commissioners in counties containing a city of the third grade of the first class to provide a depositary for the public money, and for other purposes" (85 O. L. 243-249); the Act of Feb. 13, 1889, entitled "An Act to amend sections three and four of an act entitled 'an act to create a depositary commission in all cities of the third grade of the first class, and to establish a depositary for the funds of such cities, and for other purposes,' passed April 13, 1888" (86 O. L. 44-45); the Act of April 15, 1889, entitled "An Act to require the county commission-

ers in any county having a population at the census of 1880 of 64,031, and containing a city of the second class, third grade, to provide a depository for the county funds, and for other purposes" (86 O. L. 385-391); the Act of March 26, 1891, entitled "An Act to provide a county depository in certain counties" (88 O. L. 216-222); the Act of May 21, 1894, entitled "An Act to authorize certain county commissioners to provide depositories for public money and for other purposes" (91 O. L. 403-407); the Act of April 5, 1894, entitled "An Act to amend Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 15 of an act entitled 'An Act to require the county commissioners in counties containing a city of the second grade of the first class to provide a depository for the county funds and for other purposes,' passed April 13, 1888" (91 O. L. 605-610); the Act of March 17, 1896, entitled "An Act to amend Section 2 and Section 3 of an act to authorize certain county commissioners to provide depositories for public money and for other purposes, passed May 21, 1894" (92 O. L. 73-74); the Act of April 27, 1896, entitled "An Act to amend an act authorizing certain county commissioners to provide depositories for public money and other purposes, passed May 21, 1894" Ohio Laws, Vol. 91, Pages 403, 404, 405, 406 and 407" (92 O. L. 353-357); the Act of April 27, 1896, entitled "An Act to amend Section 9 of an act to require the county commissioners in counties con-

taining a city of the third grade of the first class to provide a depositary for the public money, and for other purposes of an act passed April 13, 1888" (92 O. L. 719-720); the Act of April 27, 1896, entitled "An Act to authorize certain commissioners to provide depositaries for public money and for other purposes" (92 O. L. 755); and the Act of April 26, 1898, entitled "An Act to amend Section 1136-1 of the Revised Statutes of Ohio" (93 O. L. 376); and original section eight hundred and fifty-nine (859), section one thousand and twenty-four (1024) as amended April 26, 1904 (97 O. L. 458), section one thousand and eighty (1080), section one thousand and eighty-three (1083), section one thousand and eighty-four (1084) as amended April 26, 1904 (97 O. L. 458-459), section one thousand one hundred and five (1105), section one thousand and twenty (1020), section one thousand one hundred and twenty-six (1126), section one thousand one hundred and twenty-eight (1128) and section 1136-1 to section 1136-84, both inclusive, of the Revised Statutes of Ohio (also known as Bates Annotated Ohio Statutes) be and the same are hereby repealed.

Required by Art. II, Sec. 16, Con. of Ohio (1851).

Recognized by the Act of April 23, 1902 (95 O. L. 241), as Rev. Stat. Sec. 5244a-1.

SECTION 4. This act shall take effect and be in force on and after the first day of December, 1906.

EXPLANATION OF BILL BY SECTIONS

A BILL

To provide for the deposit of funds collected by
County Treasurers.²

*Be it enacted by the General Assembly of the State of Ohio:*³

To provide for the deposit of funds collected by
County Treasurers.²

Be it enacted by the General Assembly of the
State of Ohio:³

Section 1. That section eleven hundred and thirty-six (1136) of the Revised Statutes of Ohio be supplemented as follows with the following sectional numbers:⁴

¹A BILL. A bill is the draft of a law submitted to the consideration of a legislative body for its adoption or rejection. ² Bouvier Law Dic. (16th Ed.) 241. An Act is a bill which has been adopted. Ibid 102. A draft bill is a proposed bill not as yet introduced into a legislative body. This measure as now submitted for criticism is therefore a "draft bill."

²TITLE: The constitution provides that "no bill shall contain more than one subject which shall be clearly expressed in its title." Con. Ohio. (1851) Art. IV, Sec. 16.

³ENACTING CLAUSE: Required by Con. Ohio (1851) Art. IV, Sec. 18.

⁴SUPPLEMENTAL SECTIONS: The proposed sections under section one of this bill are made supplemental to section 1136 Rev. Stat. That section is a part of Chapter 5 of Title VIII, Part 1 of the Revised Statutes of Ohio, which chapter is entitled "County Treasurer."

Sec. 1136—a. [DEFINITIONS.]¹ For the purposes of this act the following words shall have the following meanings:

(1) Auditor:² The County Auditor of each County.

(2) Approximate:³ Within twenty (20) per cent of the exact amount.

(3) Approved Securities:⁴ Any of the following, to wit:

(a) United States Government bonds; or

(b) State bonds of the State of Ohio, County bonds of any County of Ohio, municipal bonds of any municipality of Ohio, or school bonds of any school district of Ohio, regularly issued according to law, having a market value of not less than par, and as to which there shall not have been any default for principal, interest or coupons and which are good and collectable in the opinion of the treasurer; or

(c) State bonds of any State other than the State of Ohio which has never repudiated its in-

debtedness and which have been regularly issued according to law, having a market value of not less than par, and as to which there shall not have been any default for principal, interest or coupons and which are good and collectable in the opinion of the treasurer; or

(d) Municipal bonds of a municipality of any state of the United States other than the State of Ohio, having a population of not less than ten thousand (10,000) inhabitants, whose indebtedness shall not exceed ten per cent of the value of real estate located in such municipality as assessed for purposes of taxation and which have been regularly issued according to law, having a market value of not less than par, and as to which there shall not have been any default for principal, interest or coupons and which are good and collectable in the opinion of the treasurer.

(4) Deposits:⁵ Funds placed with a depository.

(5) Depository:⁶ A bank or trust company approved as a state depository by the Board of Deposits for state funds and which shall file with the treasurer of the county wherein said bank or trust company is located, a certificate to that effect and an application that it desires to become a depository under this act and which has not so conducted itself as to warrant a withdrawal of deposits.

(6) Funds:⁷ Moneys, checks, drafts or exchange

which may be collected by or come into the hands of or be received by a County Treasurer, from whatever source and without regard to the purpose of or to which they are to be applied or to whom to be paid.

(7) May:⁸ Permissive.

(8) Shall:⁹ Mandatory.

(9) Treasurer:¹⁰ The county treasurer of each county.

¹DEFINITIONS: Sir Courtney Ibert in his work on Legislative Methods 247 gives the following advice: "The language of a Bill should be precise, but not too technical. An Act of Parliament has to be interpreted, in cases of difficulty by legal experts, but it must be passed on by laymen, be administered by laymen, and operates on laymen. Therefore it should be expressed in language intelligible to the lay folk. In some cases the compromise between popular and technical language may be effected by means of a definition. But definitions are dangerous and should be sparingly used." See also Thring on Practical Legislation, 95-96.

It has become the universal practice in drafting bills for acts of a permanent nature to insert definitions for brevity and clearness. This is illustrated by the English Bills of Exchange Act of Aug. 18, 1888; American Negotiable Instruments Code (Rev. Stat. Ohio, Sec. 3178); English Sales Code of Feb. 30, 1894; Proposed American Sales Code; the English Partnership Act of Aug. 14, 1890,

and numerous Ohio statutes. Rev. Stat. Secs. 1, 23, 720 (1536-907), 3721, 4387, 4947, 5913 and 6447.

²(1) **AUDITOR:** This abbreviation is for brevity.

³(2) **APPROXIMATE:** By Section 1136-c of this bill the Treasurer is required to divide the funds among the depositaries. It is impracticable to exactly divide such funds and maintain an exact division. Section 1136-c therefore provides for an "approximate" division. So as to prevent any abuse of power, the word "approximate" has been defined. Officers of Trust Companies who keep moneys on deposit in banks indicate that twenty per cent is a fair amount to specify.

⁴(3) **APPROVED SECURITIES:** In this Bill an attempt has been made to provide for the security of the principal. Under the various special Acts security is permitted as follows: Cuyahoga County, a bond with six resident freeholders as sureties (Rev. Stat., 1136-17); Lucas County, a bond with six resident freeholders as sureties (Rev. Stat., 1136-35); Stark County, a bond with six resident freeholders as sureties who are not stockholders in the bank (Rev. Stat., Sec. 1136-53); Seneca County, a bond with ten resident freeholders as sureties, not more than six of whom shall be stockholders in the bank (Rev. Stat., 1136-71); in the special permissive depositary law applicable to eighty-four counties, a bond with six resident free holders as sureties or by a surety company authorized to do business in Ohio and having not less than one hundred thousand dollars

capital (Rev. Stat., Sec. 1136-4). It is not believed that either personal sureties or the bond of a surety company should be accepted. In the case of a personal bond it is extremely probable that the sureties will be the chief stockholders of the bank. If the bank should fail the sureties would probably become insolvent. In view of the fact that the obligation assumed is a financial obligation and not a mere moral obligation the best regulated and responsible surety companies decline to sign bonds of this character without collateral security. This policy of the best surety companies is the result of very heavy losses suffered by surety companies which signed bonds of this character. Surety companies, new in the business and who have had no similar experience, sometimes sign bonds of this character. Although corporate suretyship is the only proper kind, yet for these reasons surety companies ought not to be accepted on such bonds. This bill therefore rejects both personal and corporate bonds and substitutes in their place negotiable securities which are quick assets to be at once realized on. It makes this practical by fixing the rate of interest at such a low figure as will enable the banks or trust company to purchase the securities to put up as collateral. This character of securities was recognized as permissive in the special act governing Cuyahoga County (Rev. Stat., Sec. 1136-20); Lucas County (Rev. Stat., 1136-38); Stark County (Rev. Stat., Sec. 1136-56); Seneca County (Rev. Stat., Sec. 1136-74), and the Special

Act applicable to the other eighty-four counties (Rev. Stat., Sec. 1136-7).

By the Revised Statute of the United States, Sec. 5153, any national bank designated as a depository is required "to give satisfactory security by the deposit of United States Bonds and otherwise for the safe keeping and prompt payment of the public money, deposited with them."

This section covers four classes of securities. The first is government bonds universally recognized as absolutely secure. The second class is bonds of the State of Ohio or County bonds of any County of Ohio or municipal bonds of any municipality of Ohio, or school bonds of any school district in Ohio. It provides that they shall be regularly issued according to law and must have a market value of not less than par. If they have such market value it is an indication that they are good. It further provides that they shall not have been in default for principal, interest or coupons. It also leaves some discretion in the Treasurer by providing they must be good and collectable in the opinion of the Treasurer. A preference is attempted to be given for Ohio bonds. The depositories should not only be encouraged to put up Ohio securities and thus enhance their value, but there should be nothing in the Ohio Statutes to cast any reflection on their worth. In view of the manner in which taxes are paid by banks (Rev. Stat., Secs. 2762-2769) no obstacle is placed in the way of the use of this kind of security.

On April 25, 1904 (97 O. L. 652), the General Assembly of Ohio passed a joint resolution to amend Section 2 of Article XII of the Constitution of the State by providing that "Bonds of the State of Ohio, bonds of any city, village, hamlet, county or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, * * * shall be exempt from taxation." Under the provisions of the Act of May 2, 1902 (95 O. L. 352), both the Democratic and Republican State Conventions have indorsed this proposed constitutional amendment which insures its adoption at the general election to be held in November, 1905. The consequences of the adoption of this amendment will be to enhance the value of bonds, furnish a ready market in Ohio and increase the holdings of bonds by Ohio bankers. The adoption of this proposed constitutional amendment will therefore tend largely to increase the practical application of the law proposed by this bill. As contingencies might arise and there would not be enough Ohio bonds to put up, a provision is made for two other classes of securities. The first of these other two classes is state bonds of another state. Limitations are thrown around taking these and it becomes the duty of the Treasurer to use reasonable care in making inquiry whenever bonds of another state are offered, whether said state had ever repudiated its indebtedness. Another class admitted is municipal bonds of municipalities located outside of

Ohio. Where such are offered it becomes the duty of the County Treasurer to use reasonable care to secure the information required before taking this class of securities.

An eminent banker has made the following suggestion:

"Would it not be well to include in the list of securities approved stocks that have not defaulted in their dividends for, say the past five years, and whose market value is not less than par. If these could be taken, say on the basis of 75c, it would seem to me to provide a perfectly safe security and the stocks could be endorsed to a trustee and held in escrow subject to the fulfillment of the contract?"

Before embodying this provision in the draft bill, opinions are invited as to its wisdom.

⁵(4) **DEPOSITS:** It has been thought well for the sake of brevity to define the word "deposits" as the funds which have been placed in a depository.

⁶(5) **DEPOSITARY:** Under the special acts applicable to Cuyahoga County (Rev. Stat., Sec. 1136-16); Lucas County (Rev. Stat., Sec. 1136-34); Stark County (Rev. Stat., Sec. 1136-52); Seneca County (Rev. Stat., Sec. 1136-70); and the special act applicable to eighty-four counties (Rev. Stat., Sec. 1136-16) funds must be placed with the highest bidder. This is a cumbersome provision, not conducive to the best results, and places all of the funds in one bank with possibly inadequate security. These acts are capable of the greatest abuse by the weakest bank with the weakest personal or corpo-

rate security bidding the highest rate of interest and thus securing all the funds.

By the Act of May 3, 1904 (97 Ohio Laws 535), provision is made for state depositaries. The third section of that Act is as follows: "Sec. 3. All banks and trust companies applying to be made state depositaries under the provision of this act, shall on or before the date of the meeting of the board of deposit, file their application in writing with the chairman of the board of deposit, said application to be accompanied with a sworn statement of the financial condition of said bank or trust company, at time application is made. The board of deposit at its meetings, shall pass upon all applications made in compliance with this act, and shall stamp upon the application "approved" or "rejected," and the same shall be duly signed by the members of the board of deposit or a majority of them. Any and all applications stamped "approved" and signed by the members of said board as herein provided, shall be deemed eligible to be made state depositaries under the provisions of this act."

It has been deemed wise to bring county depositaries into harmony with state depositaries. Any bank or trust company desiring to become a depositary for county funds must first qualify as a depositary for state funds. The mere fact that state depositaries are not thereafter entrusted with state funds in no manner disqualifies them as state depositaries, but on the contrary they will also become qualified as county depositaries. Under

this definition, to become a county depository, a bank or trust company must have been approved as a state depository and file a certificate to that effect and an application with the county treasurer.

⁷(6) **FUNDS:** Although the law contemplates that the tax-payer shall pay his taxes in actual cash (Rev. Stat., Sec. 1085) or United States notes or notes of solvent National or State Banks (Rev. Stat., Sec. 1085-1) as a matter of practice the great bulk of taxes are paid either with checks, drafts, or exchange on New York which are collected through banks. It has therefore been thought wise to define funds as including moneys, checks, drafts or exchange. The responsibility for their collection is set forth in Sec. 1136-k. In order that no doubt could exist of the legislative intent that the County Treasurer should collect interest on all funds collected, whether they were subsequently to be paid to the state, municipalities, school districts or otherwise, this section provides that the word "funds" shall include all moneys from all sources without regard to whom the money shall ultimately be paid.

⁸(7) **MAY:** As the word "may" is sometimes construed to mean "shall" and "shall" construed to mean "may," it has been thought wise to provide that the word "may" as found in this bill shall always be interpreted as permissive.

⁹(8) **SHALL:** For the same reasons it has been thought wise to expressly provide that the word "shall" when found in this act shall always be interpreted as mandatory.

¹⁰(9) **TREASURER:** This abbreviation is for the sake of brevity.

Sec. 1136-b. [**RESERVE FOR CURRENT EXPENSES.**]¹ A treasurer may reserve in his hands a reasonable sum, not to exceed five thousand (\$5000) dollars, for jury fees, witness fees and soldier's relief fund.

¹**EXPLANATORY:** It has been thought wise to allow the treasurer in his discretion to retain a reasonable sum not to exceed five thousand dollars for jury fees, witness fees and soldier's relief. This, however, is permissive and the treasurer will have the right to create a reserve or pay jury fees, witness fees and soldier's relief by checks drawn on a depository. A similar provision is found in the Special Acts governing Cuyahoga County (Rev. Stat., 1136-27); Lucas County (Rev. Stat., Sec. 1136-45); Stark County (Rev. Stat., Sec. 1136-63), and Seneca County (Rev. Stat., Sec. 1136-81).

Sec. 1136-c. [**DEPOSITARIES.**]¹ The Treasurer shall from day to day deposit in the depository or depositories as defined in this act² located in his county all funds, except said reserve, if any, and if there be more than one such depository, said funds shall be divided among said depositories in approximate³ proportion to the paid up capital and surplus of said depositories.

¹**EXPLANATORY:** Under the five special acts governing Cuyahoga, Lucas, Stark and Seneca

County and the special act governing the other eighty-four counties, favoritism is prevented by competitive bidding. It is the general opinion that the system of competitive bidding under these special acts is not economically sound. The object of competitive bidding is to prevent favoritism. Favoritism may be equally prevented by providing for a division of the funds among depositaries as defined in Sec. 1136-a, paragraph 4. The great aim of the present bill is to make the principal absolutely secure and at the same time eliminate favoritism. This is done by providing for a division of the funds in approximate proportion to the paid up capital and surplus of said depositaries. In making the division it was thought proper that the funds should be divided among banks in proportion to their financial strength.

²**DEPOSITARY:** This has been defined in Sec. 1136-a, paragraph 4.

³**APPROXIMATE:** This has been defined in Sec. 1136-a, paragraph 1.

Sec. 1136-d. [**SECURITY.**] Before the Treasurer makes said deposits, each depositary shall, as security for the re-payment of the deposits and interest, deposit with the Treasurer approved securities¹ to such amount that ninety-five (95) per cent of the market value thereof² shall at least equal the amount of such deposits, and the amount of said approved securities shall be kept at said ratio.³ The Treasurer may exchange approved securities with

a depositary, and a depositary not being in default for re-payment of deposits or interest, shall be entitled to coupons or interest and to a return of all or part of said securities as deposits are either entirely withdrawn and interest paid or reduced in amount.

EXPLANATORY

¹**APPROVED SECURITIES:** This term has been defined in Section 1136-a, paragraph 2.

²**MARGIN OF SECURITIES:** Although the sum collected in Cuyahoga County last year amounted to \$8,500,000 and the average amount in the depositary amounted to two million dollars, a bond of not less than \$400,000 was permitted under the special act governing that county (Rev. Stat., Sec. 1136-17). Under this special act when securities were deposited their face value was required to be at least the sum of four hundred thousands dollars (Rev. Stat., Sec. 1136-20). In Lucas County the average amount at interest last year was, according to the best information at hand, \$337,503.44. Under the Special Act governing Lucas County a bond of not less than \$600,000 was required (Rev. Stat., Sec. 1136-35). When securities were deposited their face value was required to be not less than \$400,000 (Rev. Stat., Sec. 1136-38). Inquiry from the Treasurer of Stark County has failed to elicit any information as to the amount placed at interest. Under the Special Act governing Stark County a bond of not less than \$300,000 was required (Rev. Stat., Sec. 1136-53). Under this act when securi-

ties are deposited they must be of the face value of at least \$300,000 (Rev. Stat., Sec. 1136-56). The Treasurer of Seneca County has failed to furnish any information as to the amount at interest in that county. Under the Special Act governing Seneca County a bond of not less than \$200,000 is required (Rev. Stat., Sec. 1136-71). Under this act when securities are deposited they are required to be the face value of the deposit (Rev. Stat., Sec. 1136-74). Under the Special Act governing the other eighty-four counties the bond is required to be of the face value of the deposit (Rev. Stat., Sec. 1136-4). Where securities are deposited they are required to be of the face value of such deposits (Rev. Stat., Sec. 1136-7). None of these statutes seem to be wise, the first four of said acts do not provide adequate security and the fifth act applicable to eighty-four counties requires too great security when it provides that the face value of the securities shall be equal to the amount of deposits. This is easily illustrated in practice. If bonds were selling at one hundred and twenty-five, the security would be twenty-five per cent in excess of the deposits. This is unfair and would possibly make the act impossible of operation. The proposed bill provides that the amount of the deposits shall be ninety-five per cent of the market value of the securities. This allows an ample amount for fluctuation. In addition it is to be borne in mind that the assets of the depository are some security if the five per cent were more than extinguished by fluctuations in value.

³**SECURITY:** This section gives the Treasurer power to call for additional securities because the section provides that "said approved securities shall always be kept at said ratio."

Sec. 1136-e. [INTEREST.]¹ Depositaries shall be charged with and shall pay interest on deposits and credited interest at the rate of two (2) per cent per annum on daily balances, said interest to be placed to the credit of the funds on the first day of each month. The Treasurer shall, in making settlements, pay the interest to the officer to whom the principal may be paid when said principal amounts to as much as one thousand (\$1,000) dollars, and shall credit the interest on county funds for county purposes and funds less than one thousand (\$1,000) dollars to said county funds.²

¹**EXPLANATORY:** The aim of the act being to make the principal secure and at the same time avoid favoritism, a flat rate of two per cent interest is provided for. The matter of the rate of interest has been discussed and considered by a great number of persons and a great number of suggestions offered. Some have thought it wise to have competitive bidding. The objections to this have already been stated. Others have suggested that the rate should be left to the discretion of the treasurer of each county to fix the rate of interest not less than two per cent. This might also give rise to favoritism by a county treasurer adjusting his rate to meet the views of his particular patron.

In the Special Acts the following rates of interest are provided: Cuyahoga County, no minimum; Lucas County, not less than one per cent (Rev. Stat., Sec. 1136-33); Stark County, not less than two per cent Rev. Stat., Sec. 1136-51); Seneca County, not less than two per cent (Rev. Stat, Sec. 1136-69); special act applicable to eighty-four counties, not less than one per cent.

The State Depositary Act (Sec. 5) of May 3, 1904 (97 Ohio Laws 538), provides for not less than two per cent. Active depositaries are to pay interest at the rate of not less than one per centum per annum (Sec. 7). By Section 4 of this Act favoritism is minimized by providing that one bank may have not to exceed five hundred thousand dollars at one time.

The actual practice under the special county depositary legislation is shown in the answers of the treasurers of nineteen counties, as follows:

Butler County—County Seat, Hamilton—rate of interest, 1%.

Clark County—County Seat, Springfield—rate of interest 3 1-10 %.

Cuyahoga County—County Seat, Cleveland—rate of interest 3.381 %.

Erie County—County Seat, Sandusky—rate of interest, 1½ %.

Fairfield County—County Seat, Lancaster—rate of interest, 1¼ %.

Greene County—County Seat, Xenia—rate of interest, 1 %.

Harrison County—County Seat, Cadiz—rate of interest, $1\frac{1}{4}$ %.

Henry County—County Seat, Napoleon—rate of interest, $1\frac{1}{2}$ %.

Highland County—County Seat, Hillsboro—rate of interest, 1 %.

Lawrence County—County Seat, Ironton—rate of interest, 26-10 %.

Lorain County—County Seat, Elyria—rate of interest, 3.51 %.

Lucas County—County Seat, Toledo—rate of interest, $2\frac{1}{2}$ %.

Monroe County—County Seat, Woodsfield—rate of interest, 1 %.

Muskingum County—County Seat, Zanesville—rate of interest 3.51 %.

Portage County—County Seat, Ravenna—rate of interest, $1\frac{1}{2}$ %.

Richland County—County Seat, Mansfield—rate of interest, 1 %.

Trumbull County—County Seat, Warren—rate of interest, 1 %.

Van Wert County—County Seat, Van Wert—rate of interest, 1 %.

Wood County—County Seat, Bowling Green—rate of interest, 3.51 %.

Hon. A. K. Spencer, Treasurer of Cuyahoga County, reports as follows: "At present the County is getting on the proceeds, interest at the rate of 3.58 per cent. Before this time the rate was 2.85 per cent."

A flat rate of 2 per cent interest is fixed by the Pennsylvania Acts governing state depositaries; Laws of Pennsylvania (1897), page 157, section 2; by section 6 a rate of $1\frac{1}{2}$ per cent for active depositaries.

²**APPLICATION OF INTEREST:** By this bill the interest follows the principal, except when the principal is less than \$1,000.00. This is only fair and just as illustrated by the tax levy for 1904 in Hamilton County. The state levy was 1.35 mills; the levy for the City of Cincinnati was 22.24 mills; the levy for strictly county purposes was 5.43 mills; the levy for Cincinnati school districts was 22.54 mills. It is therefore only proper that the interest collected on state funds should go to the state; the interest collected on city funds should go to the city; the interest collected on strictly county funds should go to the county, and the interest on school funds should go to the school district.

Sec. 1136-f. [NO CHARGE FOR SERVICES.]¹ No depositary shall make any charge or charges for acting as such depositary, or for making collections or disbursing funds.

¹**EXPLANATORY:** The object of this section is to prevent any depositaries making a pretended charge for services to offset the interest through collusion with a county treasurer.

Sec. 1136-g. [WARRANTS FOR WITHDRAWAL OF FUNDS.]¹ The Treasurer shall make up a statement of the approximate proportion of the funds to which each depositary is entitled.

The Treasurer shall give written notice to the Auditor of the names of the approved depositary or depositaries and of the approximate amount to which each depositary is entitled. He shall also notify the Auditor of each deposit when made. The Auditor shall keep an account of the deposits and withdrawals in and from each of the depositaries.

The Treasurer shall notify the Auditor whether he keeps a reserve for the cash payment of jury fees, witness fees and payments for the soldier's relief fund and the amount thereof. In case of said reserve, warrants of the Auditor thereon shall be in duplicate and said warrants shall be plainly marked "Original" and "Duplicate" on their face. The duplicate warrant shall be receipted by the person receiving the same and retained by the Auditor.

No funds shall be drawn from a depositary except by a warrant of the Auditor on the Treasurer. Said warrant shall be in triplicate and plainly marked "Original," "Duplicate" and "Triplicate" on their face. Attached to and forming a part of the original warrant shall be an unsigned check upon a depositary and a detachable duplicate. The triplicate warrant shall be receipted by the person to whom the warrant is issued and retained by the Auditor. The original warrant with the check attached and a detachable duplicate shall be presented to the Treasurer. The person to whom the same

is issued shall sign said duplicate warrant and the same shall be detached and retained by the Treasurer. The Treasurer shall sign the check which shall remain attached to the original warrant and the original warrant with check attached shall be delivered to the person to whom the same is issued. No depositary shall cash any check of the Treasurer on such depositary unless said original warrant is receipted by the person to whom it is issued, said check duly endorsed and said check remains attached to said warrant.

In drawing said warrants and checks said Auditor shall maintain an approximate proportion for the distribution of funds among depositaries and when any depositary shall have more than its approximate proportion said Auditor shall equalize said deposits by warrants drawn as herein provided.

When the Treasurer shall notify an Auditor that a depositary has been disapproved or rejected by the State Board of Deposits or a depositary does not promptly meet its obligations or a depositary does not strictly conform to all the provisions of the law and this act, said Auditor shall draw warrants so as to deposit said funds in other depositaries, if any, or if not so as to place said funds in the County Treasury.

¹EXPLANATORY: Under the Special Acts various restrictions were imposed in the drawing of checks as follows: Cuyahoga County, warrant

was attached to check (Rev. Stat., Sec. 1136-22); Lucas County, check numbered to correspond with the warrant and signed by the Auditor and Treasurer (Rev. Stat., Sec. 1136-40); Stark County, the check to be attached to the warrant (Rev. Stat., Sec. 1136-57); Seneca County, it seems that the check is to be signed by the Treasurer (Rev. Stat., Sec. 1136-77 and 1136-80); in the Special Act governing the eighty-four counties no limitation is provided and the Treasurer seems to be at liberty to draw on the funds in the depositary by his check as Treasurer.

In the State Depositary Act of May 3, 1904 (97 Ohio Laws 535), no limitation is placed upon the manner of withdrawing funds out of the depositary upon the check of the State Treasurer.

Sec. 1136-h. [SALE OF SECURITIES.]¹ The Treasurer shall sell any or all securities deposited with him at public or private sale whenever there shall be a neglect, failure or refusal on the part of any depositary to immediately pay over said deposits and interest or any part thereof upon the check, demand or order of said Treasurer; and the absolute ownership of such securities shall rest in the purchaser or purchasers upon the payment of the purchase price to the Treasurer. Any surplus remaining after re-paying the amount of the deposits with interest thereon and expenses of sale, shall be paid over to the depositary having the deposit or its legal representative. Notice of said sale shall

be given either by letter addressed to and mailed or delivered to said depositary or its legal representative not less than five (5) days before said sale or by notice published in a newspaper of general circulation in the County where the depositary is located, not less than five (5) days before sale.

¹**EXPLANATORY:** This provision is similar to Section Eight (8) of the Act of May 3, 1904 (97 Ohio Laws 537), governing depositaries for state funds.

Sec. 1136-i. [RESPONSIBILITY OF TREASURER.]¹ The Treasurer and his sureties shall be liable for a faithful performance of the Treasurer's duties under the law and for the proper accounting for and paying and turning over all funds and all securities placed in his hands; but neither he nor his sureties shall be held liable for any funds that may be lost by reason of the failure or insolvency of any depositary or the depreciation of any approved securities when said Treasurer has used reasonable care.

¹**EXPLANATORY:** This section is similar to the provisions of the various special acts as follows: Cuyahoga County (Rev. Stat., Sec. 1136-29); Lucas County (Rev. Stat., Sec. 1136-47); Stark County (Rev. Stat., Sec. 1136-65); Seneca County (Rev. Stat., Sec. 1136-83); Special Act applicable to eighty-four counties (Rev. Stat., Sec. 1136-11). Section 6 of the State Depositary Act of May 3,

1904 (97 Ohio Laws 535, 536), provides: "The treasurer of state shall be personally responsible for a faithful performance of his duties under the law, and for a proper accounting of all moneys paid to him as treasurer of state; but he shall not be held personally liable for any moneys that may be lost by reason of the failure or insolvency of any bank or trust company selected as depository under the provisions of this act."

Sec. 1136-j. [RESPONSIBILITY OF COUNTY]¹ Where a Treasurer has embezzled or converted to his own use or the use of another or lost, or cannot or does not account or turn over any approved securities, and the bond of said Treasurer is not adequate to cover said embezzlement, conversion, loss, failure to account or turn over, the county of which said Treasurer is the Treasurer shall be legally liable therefor.

¹**EXPLANATORY:** Revised Statutes of Ohio, Sec. 859, provides that the County Commissioners shall provide "fire and burglar proof vaults and safes and other means of security in the office of the county treasurer as are necessary for the perfect protection of the public moneys and property therein." It is proposed to amend this section as hereinafter set forth. Revised Statute, Sec. 1084, amended April 26, 1904 (97 Ohio Laws 458-459), provides that "The treasurer shall keep his office at the seat of justice of his county, and in a room or rooms provided for that purpose by the county commissioners,

which shall constitute the county treasury, in which, except as otherwise specifically provided by law, all public moneys and property in his possession shall be at all times kept." It is proposed to amend this section as hereinafter set forth. The amount of money in the hands of a Treasurer frequently exceeds the amount of his bond. Therefore in case of embezzlement in excess of his bond the county would lose the same. The object of this bill is to provide for the earning of interest on public funds. The absolute security of this as against the insolvency of the depositary is provided for by requiring securities of the highest order immediately convertible into cash. These depositaries are required to deposit the securities with the Treasurer. Consequently the securities merely take the place of the cash. Therefore it does not seem just that the responsibility for these securities should fall on the depositaries. The responsibility for the securities should rest just where the responsibility for the cash rests; namely, upon the county. It was these reasons which dictated the insertion of Sec. 1136-j. In the various special acts other provisions have been made to earmark the securities as follows: Cuyahoga County, by endorsement thereon (Rev. Stat., Sec. 1136-20); Lucas County, by endorsement thereon (Rev. Stat., Sec. 1136-38); Stark County, by endorsement thereon (Rev. Stat., Sec. 1136-56); Seneca County, by endorsement thereon (Rev. Stat., Sec. 1136-74); Special Act applicable to eighty-four counties seems

to contain no special manner of ear-marking the bonds (Rev. Stat., Sec. 1136-7). It does, however, provide that "The Commissioners shall make ample provision for the safe keeping of said hypothecated bonds" (Rev. Stat., Sec. 1136-7). A similar provision is found in the Special Acts pertaining to the other counties, to-wit, Cuyahoga County (Rev. Stat., Sec. 1136-20); Lucas County (Rev. Stat., 1136-38); Stark County (Rev. Stat., Sec. 1136-56); and Seneca County (Rev. Stat., Sec. 1136-47). Under the State Depositary Act of May 3, 1904 (97 O. L. 535) no provisions are made to ear mark the securities.

Sec. 1136-k. [RESPONSIBILITY OF TAX-PAYER.]¹ The receipt by a Treasurer of checks, drafts or exchange shall in no manner be regarded as payment. No sum shall be considered paid until money has been received therefor either by the Treasurer or a depositary. No responsibility shall attach in any manner directly or indirectly to a Treasurer, his sureties, or the county by reason of the receipt of a check, draft or exchange and they and their collection shall be entirely at the risk of the person turning same in to a Treasurer.

¹**EXPLANATORY:** It is the contemplation of the law that all public dues shall be paid in cash (Rev. Stat., Sec. 1085) or the notes of the United States or the notes of solvent national or state banks (Rev. Stat., Sec. 1085, 1085-1), but as has been shown in actual practice Treasurers do receive

checks. All payments other than cash should be at the entire risk of the person who chooses to pay the Treasurer in anything else but cash. Checks, drafts or exchange should not in any manner be regarded as payment, but only the proceeds therefrom. This is provided for in this section.

Sec. 1136-1. [MONTHLY BALANCES.] On the first business day of each month the Treasurer shall deliver to each depositary the bank book showing deposits and on not later than the tenth day of each month said depositary shall return said bank book duly balanced with all paid checks with vouchers attached, which shall be carefully preserved by the Treasurer. Said bank books, checks and vouchers shall be open to the examination of the Auditor and the examiners to be appointed under this chapter.

¹EXPLANATORY: The Special Depositary Acts as follows: Cuyahoga County (Rev. Stat., Sec. 1136-23, 1136-24, 1136-25, and 1136-28); Lucas County (Rev. Stat., Sec. 1136-41, 1136-42, 1136-43 and 1136-46); Stark County (Rev. Stat., Sec. 1136-59, 1136-60, 1136-61, 1136-64); Seneca County (Rev. Stat., Sec. 1136-77, 1136-78, 1136-79, 1136-82); Special Act applicable to eighty-four counties (Rev. Stat., Sec. 1136-9) are very elaborate in their requirements of monthly statements. These sections are regarded by bankers as cumbersome and in no way aiding the public security. Revised Statutes, Secs. 1129-1130-1131 provides for the examination of the County Treasury.

Sec. 1136-m. [COUNTIES WITHOUT DEPOSITARIES.]¹ When, for any reason, any county shall be without a depositary, or none shall file a certificate or application or does not comply with the provisions of this act or it shall not be acceptable for any reason, moneys collected or received by the reasurer shall remain in the custody of the Treasurer and he shall be governed by the general laws relating to County Treasurers.

¹EXPLANATORY: The provisions of this section, conform to the latter part of Sec. 1136-13, Rev. Stat., applicable to eighty-four counties.

Section 2. That original section eight hundred and fifty-nine (859), section one thousand and twenty-four (1024) as amended April 26, 1904 (97 O. L. 458), section one thousand and eighty (1080), section one thousand and eighty-three (1083), section one thousand and eighty-four (1084) as amended April 26, 1904 (97 O. L. 458-459), section one thousand one hundred and five (1105), section one thousand one hundred and twenty (1120), section one thousand one hundred and twenty-six (1126) and section one thousand one hundred and twenty-eight (1128) of the Revised Statutes of Ohio be amended so as to read as follows:¹

¹EXPLANATORY: Slight amendments are necessary in the nine sections of the Revised Statutes which follow to make them harmonious with a general depositary law as contained in this bill.

Sec. 859. [COMMISSIONERS SHALL PROVIDE PUBLIC BUILDINGS AND VAULTS, SAFES, ETC., FOR COUNTY TREASURY.]¹ A court house, jail, offices for the county officers, and an infirmary shall be provided by the commissioners when, in their judgment, the same, or any of them, are needed, and they shall be of such style, dimensions, and expense, as the commissioners determine; and they are required to provide all such rooms, and fire and burglar proof vaults and safes, and other means of security in the office of the County Treasurer, as are necessary for the perfect protection of the public moneys, funds and securities received from depositaries and property therein.¹ (56 v. 160, Sec. 27; 55 v. 44, Sec. 2; 29 v. 315, Secs. 1, 2, 3, 7, 8, S. & C. 1228; S. & C. 1604; S. & C. 1606.)

¹EXPLANATORY. The section as now drawn is the same as the former Sec. 859, except that the words "funds and securities received from depositaries" are inserted.

Sec. 1024. [AUDITORS' WARRANT ON TREASURER.]¹ The Auditor shall issue warrants on the County Treasurer for all moneys payable out of the treasury, when the proper order or voucher or notice of settlement as provided by law is presented therefor and shall keep a record of all such warrants, showing the number, date of issue,

the amount drawn for, in whose favor, for what purpose and on what fund; but he shall not issue a warrant for the payment of any claim against the county unless the same is allowed by the County Commissioners, except in cases where the amount due is fixed by law or is allowed by some other officer or tribunal authorized by law to allow the same; provided that when any fund is exhausted, the auditor and treasurer shall make an estimate of the amount of money belonging to said fund which has been collected as taxes and credited to the undivided tax funds in the treasury and if the commissioners shall deem it advisable, they may by an order entered in their journal authorize the auditor and treasurer to transfer from said undivided tax funds to said exhausted fund an amount not to exceed three-fourths of the amount so estimated to belong to said exhausted fund and at the next semi-annual distribution of taxes the amount so transferred shall be deducted from the total amount found to be due said fund and the estimate herein shall be made in writing and signed by the auditor and treasurer and recorded on the commissioners' journal. (97 v. 458; 67 v. 103, Sec. 12.)

¹**EXPLANATORY:** Section 1024 as it now appears in the Revised Statutes allows the state audi-

tor to draw on the county treasurer in payment of settlements made for the amount due the state. It has been deemed wise to provide that all money drawn from the county treasurer shall be drawn on the warrant of the county auditor. This will tend to produce greater uniformity in accounts. The section as proposed is substantially the same as original section 1024 as amended April 26, 1904 (97 O. L. 458), except that it omits the language "except moneys due the state which shall be paid out upon the warrant of the Auditor of State."

Sec. 1080. [BOND AND OATH.]¹ The Treasurer, previous to entering on the duties of his office, shall give bond, with four or more freehold securities or one or more surety companies authorized to do business in Ohio to the acceptance of the County Commissioners, and in such sum as the Commissioners shall direct, payable to the state and conditioned for accounting for and paying over according to law all moneys, funds and securities which may be deposited by depositaries which come into his hands for state, county, township or other purposes or which come into his hands as security from depositaries; which bond with the oath of office and approval of the Commissioners indorsed thereon shall be deposited with the Auditor of the county, and be by him carefully preserved; said bond shall be made a part of the records of the proceedings of

the commissioners, of the day when accepted and approved by said Commissioners and entered in full thereon.¹ (87 v. 21; 29 v. 291, Sec. 2; S. & C. 1584.)

¹**EXPLANATORY:** This section is practically the same as it now stands. Its most important change is by inserting the words "funds and securities deposited by depositaries."

Sec. 1083. [FURTHER SURETIES, AND OFFICIAL BOND.] The County Commissioners may require the County Treasurer to give additional sureties on his previously accepted bond, when, in the opinion of a majority of the commissioners, the existing security has become insufficient; and the Commissioners are authorized to demand and receive from such County Treasurer an additional bond, payable to the state, and conditioned as required for the original bond, with good and sufficient security, in such sum as the Commissioners or a majority of them direct, when in their opinion more money or funds or securities deposited by a depositary has passed or is about to pass, into the hands of said Treasurer, than is, or would be, covered by the penalty of the previous bond; and if any County Treasurer fails or refuses to give such additional security or bond, for ten days from the day on which the Commissioners have required him so to do, his office shall be considered vacant, and another Treasurer shall be appointed, as in other cases of vacancy.¹ (36 v. 5, Secs. 1, 2; S. & C. 1589.)

¹**EXPLANATORY.** The only change in this section is the addition of the words "or funds or securities deposited by a depositary."

Sec. 1084. [WHERE TO KEEP OFFICE AND HOW ACCOUNTS KEPT]¹ The Treasurer shall keep his office at the seat of justice of his county and in a room or rooms provided for that purpose by the county commissioners, which shall constitute the county treasury, in which, except as otherwise specifically provided by law, all public moneys, securities deposited by a depositary, and property in his possession shall be at all times kept, and he shall keep an accurate account of all moneys by him received, showing the amount thereof, the time when, from whom and from what source received, and of all disbursements by him made, showing the amount thereof, the time when, to whom and for what purpose paid; and he shall so arrange his accounts that the amount received and paid on account of each separate and distinct fund shall be exhibited in a separate and distinct account; but whenever the bureau of inspection and supervision of public offices so directs, the money received for taxes charged on the general and special duplicates of the current year shall be by the treasurer entered on his account each day in the following manner, to-wit: All collections of liquor tax to be credited to the "undivided liquor tax fund;" all collections of cigarette tax to be credited to the "undivided cigarette tax fund;" all collections of inheritance tax

to be credited to the "undivided inheritance tax fund;" and all collections of other taxes and assessments of whatever kind to be credited to the "undivided general tax fund." Each business day the treasurer shall make to the auditor a statement showing, for the preceding day, the amount of taxes received and credited to the various undivided tax funds, the amount received on auditor's draft and the amount received from all other sources, and the total amount deposited in the depository as provided for in section eleven hundred and thirty-six g (1136g), the total amount paid out in cash, the balance in the depository and the balance in the treasury; and at the time of closing the books at the end of each semi-annual collection of taxes, he shall make to the Auditor a statement showing the amount of taxes received in each taxing district in the County since the last semi-annual settlement, under the following headings, to-wit: liquor tax, cigarette tax, inheritance tax, special assessment taxes, delinquent personal tax, road tax, dog tax and general tax, and the treasurer shall keep such accounts in books to be provided for that purpose, as shall enable him to make the statements required in this section. (97 v. 458-459; 55 v. 44, Secs. 2, 3; 29 v. 291; Sec. 5; S. & C. 1584; S. & C. 1606.)

EXPLANATORY: Section 1084 as here drawn is but slightly different from Rev. Stat. Sec. 1084 as amended April 26, 1904 (97 O. L. 458-459). This section as herein amended includes securities de-

posited by a depository, as items to be kept in the County Treasury. In view of the manner in which warrants are to be drawn as provided for in Section 1136-g, it was proper to omit the language: "The total amount paid by check on the depository."

Sec. 1105. [HOW MONEY SHALL BE PAID OUT.]¹ No money shall be paid out of the County Treasury or transferred to any person for disbursement except on the warrant of the County Auditor. When a county is provided with a county depository a warrant shall be drawn as provided for in Sec. eleven hundred and thirty-six g (1136-g) (55 v. 44, Sec. 9; S. & C. 1608).

¹EXPLANATORY. Section 1105 as it now appears reads as follows:

"No money shall be paid out of the county treasury, or transferred to any person for disbursement, except on the warrant of the county auditor, but money paid over by the county treasurer to the state treasurer shall be on the warrant of the state auditor."

It was deemed wise to make the payment uniformly on the warrant of the County Auditor. This matter is further provided for in Section 1120 which is amended in this bill.

Sec. 1120. [SHALL PAY INTO STATE TREASURY AMOUNT DUE THE STATE.]¹ After the County Treasurer shall have made each semi-annual settlement with the County Auditor, he shall pay into the state treasury on the warrant of

the County Auditor the full amount of all sums found by the Auditor of State, on an examination of the duplicate settlement sheets sent to him by the County Auditor, to belong to the State. The State Auditor shall give the County Auditor notice of such settlement. Where there is a county depository said warrant shall be drawn pursuant to Section 1136-g. 56 v. 101, Sec. 10, 11; S. & C. 1478).

¹**EXPLANATORY.** The change made in this section is by substituting the County Auditor as the person to draw the warrant in place of the State Auditor.

Sec. 1126. [WHEN SUIT SHALL BE BROUGHT ON HIS BOND.]¹ If the County Treasurer fails to make any settlement required by law or account for or to pay over any money at the time and in the manner prescribed by law, or fails to account for or turn over any securities deposited with him by a depository, the County Auditor on receiving instructions for that purpose from the Auditor of State or the County Commissioners, shall cause suit to be instituted against said Treasurer and his sureties for the amount due from him and the value of such securities with ten per cent penalty thereon, which suit shall have precedence of all other civil business and be prosecuted with all convenient speed. (29 v. 291, Sec. 25; S. & C. 1587.)

¹EXPLANATORY. In this section the words "or fails to account for or turn over any securities deposited with him by a depositary" are inserted.

SEC. 1128. [SHALL DELIVER TO HIS SUCCESSOR ALL PUBLIC PROPERTY IN HIS POSSESSION.]¹ The County Treasurer, at the expiration of his term of office, or on his resignation or removal from office, shall deliver to his successor all moneys, funds and securities deposited by a depositary, books, papers or other property in his possession as Treasurer; and in case of the death or incapacity of the County Treasurer, his legal representatives shall in like manner deliver over the same as aforesaid. (29 v. 291, Sec. 32; 55 v. 92, Sec. 22; S. & C. 1588; S. & C. 1602.)

¹EXPLANATORY. This section has been amended by adding the words "funds and securities deposited by a depositary".

Section 3.¹ That the Act of April 13, 1888, entitled "An Act to require the county commissioners, in counties containing a city of the second grade of the first class, to provide a depositary for the county funds and for other purposes" (85 O. L. 230-236); the Act of April 13, 1888, entitled "An Act to require the county commissioners in counties containing a city of the third grade of the first class to provide a depositary for the public money, and for other

purposes" (85 O. L. 243-249); the Act of Feb. 13, 1889, entitled "An Act to amend sections three and four of an act entitled 'an act to create a depositary commission in all cities of the third grade of the first class, and to establish a depositary for the funds of such cities, and for other purposes,' passed April 13, 1888" (86 O. L. 44-45); the Act of April 15, 1889, entitled "An Act to require the county commissioners in any county having a population at the census of 1880 of 64,031, and containing a city of the second class, third grade, to provide a depositary for the county funds, and for other purposes" (86 O. L. 385-391); the Act of March 26, 1891, entitled "An Act to provide a county depositary in certain counties" (88 O. L. 216-222); the Act of May 21, 1894, entitled "An Act to authorize certain county commissioners to provide depositaries for public money and for other purposes" (91 O. L. 403-407); the Act of April 5, 1894, entitled "An Act to amend Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 15 of an act entitled 'An act to require the county commissioners in counties containing a city of the second grade of the first class to provide a depositary for the county funds and for other purposes,' passed April 13, 1888" (91 O. L. 605-610); the Act of March

17, 1896, entitled "An Act to amend Section 2 and Section 3 of an act to authorize certain county commissioners to provide depositaries for public money and for other purposes, passed May 21, 1894" (92 O. L. 73-74); the Act of April 27, 1896, entitled "An Act to amend an act authorizing certain county commissioners to provide depositaries for public money and other purposes, passed May 21, 1894" Ohio Laws, Vol. 91, Pages 403, 404, 405, 406 and 407" (92 O. L. 353-357); the Act of April 27, 1896, entitled "An Act to amend Section 9 of an act to require the county commissioners in counties containing a city of the third grade of the first class to provide a depositary for the public money, and for other purposes of an act passed April 13, 1888" (92 O. L. 719-720); the Act of April 27, 1896, entitled "An Act to authorize certain commissioners to provide depositaries for public money and for other purposes" (92 O. L. 755); and the Act of April 26, 1898, entitled "An Act to amend Section 1136-1 of the Revised Statutes of Ohio" (93 O. L. 376); and original section eight hundred and fifty-nine (859), section one thousand and twenty-four (1024) as amended April 26, 1904, (97 O. L. 458), section one thousand and eighty (1080), section one thousand

and eighty-three (1083), section one thousand and eighty-four (1084) as amended April 26, 1904 (97 O. L. 458-459), section one thousand one hundred and five (1105), section one thousand and twenty (1020), section one thousand one hundred and twenty-six (1126), section one thousand one hundred and twenty-eight (1128) and section 1136-1 to section 1136-84, both inclusive, of the Revised Statutes of Ohio (also known as Bates Annotated Ohio Statutes²) be and the same are hereby repealed.

¹Required by Art. II, Sec. 16, Con. of Ohio (1851).

²Recognized by the Act of April 23, 1902 (95 O. L. 241), as Rev. Stat. Sec. 5244a-1.

Section 4. This act shall take effect and be in force on and after the first day of December, 1906.

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The Ohio State University



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PROPOSED BILL FOR COUNTRY DEPOSITARIES

THE OHIO STATE UNIVERSITY BOOK DEPOSITORY



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